

MONTANA LEGISLATIVE HISTORY

Chapter 348 19 95

Bill H _____ S 393

Original bill & history ✓ c

H. Committee on Taxation

Hearing Date(s) Mar 08 ✓ c

Mar 10 ✓ c

_____ c

_____ c

Date Out Mar 10 ✓ c

S. Committee on Finance & Claims

Hearing Date(s) Feb 15 ✓ c

_____ c

_____ c

_____ c

Feb 15 ✓ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

3/25 REFERRED TO TAXATION
 3/31 HEARING
 4/04 TABLED IN COMMITTEE
 DIED IN COMMITTEE

SB 391 INTRODUCED BY GROSFIELD, ET AL.

REQUIRE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO IDENTIFY
 CRITICAL LOW-WATER STREAM REACHES FOR THE FISHERY
 RESOURCE

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO NATURAL RESOURCES		
2/14	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING DO PASS MOTION FAILED	23	27
2/21	2ND READING INDEFINITELY POSTPONED	27	23

SB 392 INTRODUCED BY GAGE

AUTHORIZE THE GOVERNOR OR A DESIGNEE TO PARTICIPATE IN THE
 PACIFIC NORTHWEST ECONOMIC REGION

BY REQUEST OF SENATE BUSINESS & INDUSTRY COMMITTEE

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO STATE ADMINISTRATION		
2/17	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	49	1
2/21	3RD READING PASSED	49	1
TRANSMITTED TO HOUSE			
2/22	FIRST READING		
2/22	REFERRED TO BUSINESS & LABOR		
3/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	88	10
3/09	3RD READING CONCURRED	89	9
RETURNED TO SENATE			
3/11	SIGNED BY PRESIDENT		
3/11	SIGNED BY SPEAKER		
3/13	TRANSMITTED TO GOVERNOR		
3/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 141		
	EFFECTIVE DATE: 07/01/95		

SB 393 INTRODUCED BY AKLESTAD

CLARIFY REQUIREMENTS FOR BRINGING A CLASS ACTION FOR TAX
 REFUNDS

BY REQUEST OF SENATE FINANCE & CLAIMS COMMITTEE

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO FINANCE & CLAIMS		
2/15	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/16	2ND READING PASSED	30	19
2/17	3RD READING PASSED	34	16

	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO TAXATION		
3/08	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/30	2ND READING CONCURRED	79	17
3/31	3RD READING CONCURRED	77	21
	RETURNED TO SENATE		
4/04	SIGNED BY PRESIDENT		
4/05	SIGNED BY SPEAKER		
4/06	TRANSMITTED TO GOVERNOR		
4/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 348		
	EFFECTIVE DATE: 04/10/95		

SB 394 INTRODUCED BY DEVLIN, ET AL.

INCLUDE GRAY WOLF IN DEFINITION OF PREDATORY ANIMAL FOR PURPOSES OF PREDATORY ANIMAL CONTROL IF GRAY WOLF IS REMOVED FROM LIST OF THREATENED OR ENDANGERED ANIMALS BY FEDERAL GOVERNMENT

BY REQUEST OF THE SENATE AGRICULTURE, LIVESTOCK, AND IRRIGATION COMMITTEE

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/17	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	36	14
2/21	3RD READING PASSED	36	14
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/09	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	86	14
3/14	3RD READING CONCURRED	82	17
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 244		
	EFFECTIVE DATE: WHEN THE GRAY WOLF IS REMOVED FROM THREATENED/ENDANGERED SPECIES LIST		

SB 395 INTRODUCED BY BARTLETT, ET AL.

REVISE LAWS GOVERNING BOARD OF NURSING

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/15	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	50	0
2/22	3RD READING PASSED	50	0

SENATE BILL NO. 393

INTRODUCED BY AKLESTAD

BY REQUEST OF THE SENATE FINANCE AND CLAIMS COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE REQUIREMENTS FOR BRINGING A CLASS ACTION FOR TAX REFUNDS; CLARIFYING THAT A MEMBER OF THE CLASS MUST HAVE PAID THE TAX UNDER PROTEST; AMENDING SECTIONS 15-1-406 AND 15-1-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-406, MCA, is amended to read:

"15-1-406. Declaratory judgment. (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department of revenue is illegal or improper; or

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes ~~may be~~ are paid under protest as provided in 15-1-402. All other taxes administered by the department, except inheritance and estate taxes, are paid under protest by filing timely claims for refund and by following the uniform tax review procedures of 15-1-211. Inheritance and estate taxes are paid under protest by following the procedures set forth in Title 72.

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax, inheritance tax, or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506."

Section 2. Section 15-1-407, MCA, is amended to read:

"15-1-407. Alternative remedy -- procedure. (1) Except as provided in subsection (2), an action pursuant to 15-1-406 is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under 15-1-406 may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23. This includes the requirement that to be a member of the class, a taxpayer must be similarly situated to the representative class member and must have paid the tax under protest as provided in 15-1-406(3). ~~or~~

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under 15-1-406 may elect to give notice as provided in this subsection. A party so electing ~~must~~ shall publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice ~~shall~~ must advise each similarly situated taxpayer that:

(i) the court will exclude ~~him~~ the taxpayer from the class if ~~he~~ the taxpayer so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if ~~he~~ the taxpayer desires, enter an appearance.

1 (b) The court shall exclude a taxpayer from an action brought pursuant to 15-1-406 if the person
2 bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests
3 to be excluded by the date specified in the notice.

4 (c) An election to give notice under subsection (3) ~~of this section~~ does not prevent any party to
5 the action from serving process on other interested parties.

6 (d) This section governs alternative notice. This section does not alter the requirement under Rule
7 23, Montana Rules of Civil Procedure, that to be a member of the class, a taxpayer must have paid the tax
8 under protest as provided in 15-1-406(3).

9 (4) In a proceeding under 15-1-406 all issues ~~shall~~ must be tried by the court."
10

11 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.
12

-END-

SENATOR KEATING assumed the Chair so that SENATOR AKLESTAD could present SB 393.

HEARING ON SENATE BILL 393

Opening Statement by Sponsor:

SENATOR GARY AKLESTAD, Senate District 44, said SB 393 will clarify language that taxes would have to be paid under protest to be eligible to receive a rebate on taxes, if it is justifiable. SB 393 is an attempt to clarify the language to avoid situations like the Great Falls taxation problem where individuals got paid a rebate when they hadn't paid their taxes under protest.

Proponents' Testimony:

Larry Fasbender, Cascade County Coalition, said the only change made is a clarification of the law. This will require that a protest is filed and the protested taxes will go into an escrow fund and be available in any court cases that are settled. He concluded that this is an excellent piece of legislation to clarify the law.

Dave Woodgerd, Chief Legal Counsel for the Department of Revenue, indicated their support of SB 393 in protecting local governments and also benefitting taxpayers.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR JENKINS asked if the original understanding of the law was that they had to protest before they were paid back.

Dave Woodgerd said the Department of Revenue was not sure what the law was as it was unclear.

SENATOR KEATING asked if some taxes paid, not under protest, are reclaimed at some later date.

Dave Woodgerd said there was some confusion as to whether or not under this particular alternative procedure there was a requirement that property taxes be paid under protest. Under all other procedures in order to get a refund of property taxes, you have to pay under protest. He said this particular one was left open and this bill clarifies that.

SENATOR KEATING questioned whether taxes paid under protest are set aside and the counties cannot use that money.

Mr. Woodgerd said that was correct, they are set aside and earn interest; whoever prevails in the action gets the taxes and the interest the money has earned.

Closing by Sponsor:

SENATOR AKLESTAD said the bill is self-explanatory, adding that this type of legislation is needed to clarify the laws.

SENATOR AKLESTAD resumed the chair.

EXECUTIVE ACTION ON SENATE BILL 342

Motion/Vote: SENATOR WATERMAN MOVED THAT SB 342 BE REREFERRED TO THE SUBCOMMITTEE ON LONG RANGE PLANNING. Motion CARRIED.

EXECUTIVE ACTION ON SENATE BILL 369

Motion/Vote: SENATOR KEATING MOVED THAT SB 369 BE REREFERRED TO THE SUBCOMMITTEE ON LONG RANGE PLANNING. Motion CARRIED.

EXECUTIVE ACTION ON SENATE BILL 393

Motion/Vote: SENATOR JENKINS MOVED THAT SB 393 DO PASS. Motion CARRIED with SENATOR FRANKLIN opposed.

EXECUTIVE ACTION ON SENATE BILL 360

SENATOR AKLESTAD said the votes would remain open for all votes cast today to be fair to the other members.

Motion: SENATOR KEATING MOVED SB 360 DO PASS.

Discussion: SENATOR JERGESON said the problem with the program is that its potential has never been fully developed.

SENATOR JACOBSON said the problem with the program is that the money is being siphoned off for other things. If the money was going through grants to small businesses as a way for ranchers who are leaving their ranches to start another type of business, as the program was envisioned, she would be in full support. However, most of the money is going to the Department of Agriculture, the Department of Commerce and MSU for their laboratories. The problem is that it is not going where it was meant to go.

SENATOR FRANKLIN said the reason for the committee bill is to get a hearing and have interested parties come in and talk about the program.

DATE

2/15795

[illegible]

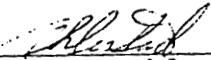
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1995

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration SB 393 (first reading copy -- white), respectfully report that SB 393 do pass.

Signed: 
Senator Gary Aklestad, Chair

DATE February 15, 1995

SENATE COMMITTEE ON Finance & Claims

BILLS BEING HEARD TODAY: SB 342 Senator Bartlett
SB 360 Senator Keating SB 369 Senator Christiaens
SB 393 Senator Klestad

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Check One

Name	Representing	Bill No.	Support	Oppose
Beth Boker	Dept of Justice	342	✓	
Lorna Frank	Farm Bureau	360		X
Randy Johnson	MT Grain Growers	360		X
Bill Verwal f	city of Helena	342	✓	
CANDACE Torgerson	Mont. Cattle Women Assn	360		X
Lee Boyer	Apt. Assn	360		
Larry Tasbender	Cascadia Cty Coalition	393	✓	
Dave Woodgerd	Dept. of Revenue	393	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HEARING ON SB 393Opening Statement by Sponsor:

SEN. GARY AKLESTAD, Senate District 44, Galata, informed the Committee that SB 393 would take care of a situation that arose in a Montana city that resulted in a successful class action suit. Following the lawsuit, individuals who had not filed a protest of their taxes and were not a party to the lawsuit received refunds. The bill clarifies the requirements for bringing a class action suit for tax refunds and provides that a member of the class must have paid the tax under protest in order to receive a refund.

Proponents' Testimony:

Larry Fasbender, Cascade County Coalition, advised that the city, county and school districts were all obligated when the lawsuit was settled and had to find the money to pay the settlement. When a taxpayer files a protest, his tax money goes into a fund and when a settlement is made, funds can be withdrawn from that fund to settle the case. In this particular instance, a class action was filed and a number of people who had not filed a protest became members of the class (all taxpayers in Cascade County) and eventually were paid a refund. The problem that occurred was that the settlement required that the refunds could not be paid by levying emergency mills to raise the money. Consequently, the local government units had to use reserve funds to make the payment. It has become clear that there must be a readily available fund to make refunds. He said the legislation will make it clear that in the future, whenever a suit is filed that may become a class action suit, in order to maintain the members of the class, all of the members would have had to file their taxes under protest. The money would be placed into a fund to provide a source of revenue to make the settlement payment. By putting this legislation in place, the problem may not occur again.

Larry Allen, Attorney, Montana Department of Revenue (DOR), expressed support for SB 393. He said it would provide a uniform refund procedure for taxpayers.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ELLIOTT asked how a taxpayer would know that a class action suit would be filed because it could be filed after the deadline for protesting taxes. Mr. Fasbender said that was correct. The remedy in the law now does not require that and it creates a problem because the taxes were not set aside to create a fund from which to pay refunds. The standard used nationwide is that

the taxpayer must have filed a protest in order to be considered a member of the class. To follow up, REP. ELLIOTT said the taxpayer might not protest because he was not aware that the tax was improper. Mr. Fasbender said that in most cases the amount of money involved would not make it significant and doesn't change the fact that someone may get a refund and someone else may not. That is the situation under the law at the present time.

REP. STORY asked what happens to the money when a taxpayer pays under protest. Mr. Fasbender said it is held in a special account until the case is settled. REP. STORY asked if all tax money was held. Mr. Fasbender replied that it would only be the protested portion. REP. STORY asked how a determination was made of how much went into the fund. Mr. Fasbender said it was the amount protested, such as the increase over the previous year.

REP. WENNEMAR asked if this would lead to increased filings under protest. SEN. AKLESTAD said he did not believe it would. He said a class action was not the normal procedure.

REP. STORY said that he thought it would be possible that following a reevaluation, everyone would file under protest in the event there could be a class action. Mr. Allen said the taxpayer must file under protest in order to be a member of a class. He provided an example of how the process would work.

Closing Statement by Sponsor:

SEN. AKLESTAD said the DOR had requested the bill to make sure the intent of the statute is plain.

HEARING ON HB 506

Opening Statement by Sponsor:

REP. TOM NELSON, House District 11, Billings, opened the hearing on HB 506 which would impose a 5% surcharge on the base price of a rental vehicle in Montana and would be a reimbursement for the taxes and fees paid on the rental vehicle at the time of registration. A copy of Rep. Nelson's opening statement is attached. EXHIBIT 1.

Proponents' Testimony:

Steve Costley, President, Montana Car Rental Association, testified in support of the bill. An outline of his testimony is attached. EXHIBIT 2.

Jeff Taylor, Dollar Rent a Car, Missoula, rose in support of the bill. A copy of his testimony is attached. EXHIBIT 3.

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL

DATE March 8, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Location _____ COMMITTEE _____ BILL NO. SB 393
 DATE 3/8/95 SPONSOR(S) Sen. Aklestad

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<u>Larry Tasbender</u>	<u>Cascade Coalition</u>			☒

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON SB 393Motion:

REP. ELLIOTT MOVED THAT SB 393 BE CONCURRED IN.

Discussion:

REP. ELLIOTT said the proposal seemed fair. If a person is going to join a class action suit, the person should have filed a protest along with paying the tax.

REP. FUCHS said the bill would require that everyone send a letter with their tax payment saying they are filing a protest "just in case" a class action is filed.

REP. WENNEMAR said the bill establishes a procedure and he would support the bill. The bill would close a loophole.

REP. ELLIOTT said the reasons the bill was brought forward was to clarify who could be a member of a class action suit and brings all taxpayers into conformity, and it provides that protested taxes are deposited in an escrow account to be used in the event the protester wins and settlements would not have to be made from the general fund of the taxing jurisdiction.

REP. REAM commented that someone had remarked that in the Great Falls case that prompted this legislation, the only person who came out well was the attorney who was paid \$673,000.

Vote:

On a voice vote, the be concurred in motion passed, 15 - 5.

EXECUTIVE ACTION ON HB 586

CHAIRMAN HIBBARD asked if there were any objections to executive action on HB 586 heard earlier in the meeting. There were no objections.

Motion:

REP. BOHLINGER MOVED THAT HB 586 DO PASS.

Discussion:

REP. BOHLINGER said Rep. Wyatt had brought forth an idea that needs exploration. There are serious questions about what is fair and he did not think the entire list she had suggested should be tax exempt but there should be discussion.

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL

DATE March 10, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson			✓
Rep. Scott Orr			✓
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson			✓
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		



HOUSE STANDING COMMITTEE REPORT

March 10, 1995

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Mr. Speaker: We, the committee on Taxation report that Senate Bill 393 (third reading copy -- blue) be concurred in.

Signed: _____

A handwritten signature in cursive script, reading "Chase Hibbard".

Chase Hibbard, Chair

Carried by: Rep. Sommerville

Committee Vote:
Yes 15, No 5.

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